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Lawrence R. Krevor

May 24, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WT Docket No. 02-55

Dear Ms. Dortch:

The Federal Communications Commission (the “Commission”) should reject the arguments made by AT&T Inc. (“AT&T”) in a letter filed in this proceeding on April 19, 2007.¹ Instead of offering any constructive proposals that would expedite or make reconfiguration more efficient, AT&T proposes that the Commission subject Sprint Nextel Corporation (“Sprint Nextel”) to a series of sanctions. AT&T does not – and it cannot – demonstrate how these sanctions would advance the Commission’s goal of completing band reconfiguration with minimal disruption to 800 MHz incumbents.

Significant progress has been made in reconfiguring the 800 MHz band. The Commission, the 800 MHz Transition Administrator (“TA”), public safety licensees, Sprint Nextel, and other stakeholders have worked diligently together to retune hundreds of licensees with minimal disruption to their operations. Sprint Nextel has now completed Phase I of the Commission’s reconfiguration plan in 29 NPSPAC regions – thereby clearing channels 1-120 for subsequent retuning of the largest public safety communications networks. Sprint Nextel also has completed all of its Phase I retuning responsibilities in six additional NPSPAC regions, with less than five percent of the Phase I incumbents in those six additional regions needing more time to complete their retunes.² As for Phase II, Sprint Nextel has executed retuning agreements with over 200 incumbents, is providing planning funding to more than 250 other NPSPAC

¹ Letter from Brian Fontes, AT&T, to Marlene Dortch, FCC Secretary (April 19, 2007) (“AT&T Letter”). The instant letter will refer to “AT&T” to include its predecessor companies, including Cingular Wireless LLC (“Cingular”) and AT&T Wireless. All pleadings referenced in this letter were filed in WT Docket No. 02-55 unless otherwise noted.

² Letter from Lawrence R. Krevor, Sprint Nextel, to David L. Furth, Public Safety and Homeland Security Bureau, FCC, at 1-4 (Jan. 26, 2007) (“Jan. 26 Progress Report”). The Jan. 26 Progress Report indicated that Sprint Nextel had facilitated retuning in 26 NPSPAC regions eighteen months from the start of band reconfiguration. Since December 26, 2006, three additional Phase I NPSPAC regions were completed: Wave 1 markets New York and eastern Pennsylvania, and Wave 2 market Austin, TX.

licensees and is an active participant in TA mediations to reach planning funding or retuning agreements with nearly 400 additional licensees in Waves 1, 2 and 3 of Phase 11.

Sprint Nextel concurs with AT&T in one respect: 800 MHz reconfiguration has proven to be more time consuming than anticipated and the process can be frustrating to all stakeholders. On February 15, 2007, Sprint Nextel joined the public safety community in asking the Commission to direct the TA to develop specific benchmarks for fully completing 800 MHz NPSPAC retuning based on the coordinated input and commitments of all stakeholders.³ On April 20, 2007, Sprint Nextel submitted an *ex parte* presentation to the Commission proposing three interrelated actions that, taken together, would facilitate, shorten, and simplify retuning negotiations, limit the need for and scope of mediation, and create certainty as to channel retune timing for all NPSPAC licensees.⁴ Most recently, Sprint Nextel filed a letter with the Commission reiterating its support for the Commission relaxing its “minimum cost standard” to potentially simplify and expedite retuning cost negotiations,⁵ and the Commission has promptly granted that flexibility.⁶

Throughout this process, Sprint Nextel and the vast majority of 800 MHz licensees have adhered to a central tenet underlying the *800 MHz R&O*: “parties must work together to abate interference and endure an occasional hardship as a necessary concession to the nation’s overall Homeland Security obligations.”⁷ AT&T opposed the Commission’s 800 MHz band reconfiguration plan prior to its adoption,* advancing arguments ultimately rejected by the Commission; the Commission should similarly reject AT&T’s unjustified attack on Sprint Nextel, the TA, and the Commission – and by implication, hundreds of public safety licensees.’

³ Letter from Wanda S. McCarley, President, APCO International, *et al.*, to Chairman Kevin J. Martin, FCC, attached to Letter from Robert M. Gurs, APCO International, to Marlene H. Dortch, FCC Secretary (Feb. 15, 2007) (“Joint Public Safety-Sprint Nextel Feb. 15 Letter”).

⁴ Letter from Regina M. Keeney, Counsel for Sprint Nextel, to Marlene H. Dortch, FCC Secretary (April 20, 2007) (“Sprint Nextel April 20 Letter”).

⁵ Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Chairman Kevin J. Martin, FCC (May 16, 2007).

⁶ *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Memorandum Opinion and Order, FCC 07-92 (rel. May 18, 2007 (“*Cost Flexibility MO&O*”).

⁷ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, ¶ 339 (2004) (“*800 MHz R&O*”).

⁸ Yet AT&T will benefit substantially from 800 MHz reconfiguration because it will virtually eliminate the circumstances under which its 800 MHz cellular operations can interfere with public safety communications. Since March 2005, AT&T has been included as a potential contributor in 330 reports of 800 MHz public safety interference.

⁹ AT&T’s letter may be a tactical attempt to divert attention from its own anticompetitive actions. In testimony on April 19 before the House Telecommunications Subcommittee, Sprint Nextel’s Chief Technology Officer, Mr. Barry West, pointed to the virtual monopoly pricing power of AT&T and Verizon for special access circuits as a critical hindrance to the rollout of competitive wireless broadband services across the United States. Mr. West recommended that Congress pursue remedies to this market failure. *See* Testimony of Barry West, Chief Technology Officer and President, 4G Mobile Broadband, Sprint Nextel Corporation, on the Digital Future of the U.S.: Part 3: Spectrum Opportunities and the Future of Wireless, Before the House Subcommittee on Telecommunications and the Internet (Apr. 19, 2007) (“Testimony of Barry West”).

II. Sprint Nextel Cannot Unilaterally Control 800 MHz Reconfiguration

In its letter, AT&T ignores the success of Phase I of band reconfiguration, the hundreds of planning and retuning agreements already executed in Phase II, and the numerous factors beyond Sprint Nextel's control that have made reconfiguration more complex, more time consuming and indeed more frustrating than expected. Sprint Nextel has previously explained that it has 207 full-time employees dedicated to reconfiguration to move the retuning process forward as quickly and efficiently as possible.¹⁰ Sprint Nextel took all steps within its control to meet the Commission's 18-month benchmark, and continues to work diligently with all incumbent licensees to expeditiously and efficiently complete reconfiguration in the remaining Phase I markets and to move forward with NPSPAC retuning. Sprint Nextel has executed over 1200 relocation agreements, prepared the necessary modification applications, cleared its own operations from its prior spectrum, and both paid for and facilitated incumbents' retuning to the now cleared replacement channels.¹¹

The fact is that incumbent licensees are responsible for undertaking the physical retuning of their systems or overseeing or arranging for such activity.¹² Sprint Nextel has no direct involvement in the actual performance of an incumbent's physical retuning, and cannot *compel* an incumbent to complete retuning. The Commission has formally recognized that factors outside Sprint Nextel's control can prevent the expeditious completion of 800 MHz retuning in a given region, and has made clear that Sprint Nextel should not be accountable for retuning delays if they are the result of such circumstances.¹³

One of the Commission's primary goals is to avoid disrupting public safety communications during the transition to the new band plan. Individual public safety licensees should be able to undertake the necessary planning activities, even when this may require more time than presently allowed under current reconfiguration benchmarks. For example, approximately half of all NPSPAC licensees have chosen to negotiate planning funding agreements with Sprint Nextel and do not expect to complete their planning activities until later

¹⁰ See Jan. 26 Progress Report.

¹¹ More than 1,000 incumbents previously licensed for channels 1-120 have completed retuning. Another 200 incumbents in the 1-120 channel block are retuning their systems.

¹² 800 MHz R&O ¶ 198; *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶ 74 ("800 MHz Supplemental Order").

¹³ See 800 MHz R&O ¶ 332. For example, one incumbent licensee has chosen to appeal to an Administrative Law Judge an adverse decision by the Public Safety and Homeland Security Bureau (the "Bureau") on one proposed retuning cost element. An incumbent licensee in the Midwest has only recently obtained a vendor to do its retuning work after refusing to do so for more than a year. In another case, the licensee insisted that drive testing under a certain standard must serve as the basis for determining whether it has received comparable facilities following its Phase I band reconfiguration – despite contrary guidance from the TA, the plain language of the 800 MHz R&O, and an adverse Bureau decision. The licensee has not, however, accepted the Bureau's position, and the case has been sent back to the Bureau for further proceedings. AT&T's proposals to sanction Sprint Nextel will not resolve these types of issues.

this year.¹⁴ Upon completing planning, these licensees still have to negotiate frequency relocation agreements with Sprint Nextel, enter into agreements with their vendors and consultants, and then physically retune thousands of subscriber units and their physical infrastructure before they can retune over to their replacement channels. In other words, the pace of 800 MHz retuning will be driven by individual incumbents' retuning requirements, which are largely outside Sprint Nextel's control. AT&T's letter glosses over these facts.

Similarly, the Commission's Phase II negotiation and mediation rules and policies have required nearly every NPSPAC licensee to participate in an adversarial, expensive and time consuming TA mediation process. If a public safety licensee has not executed a Frequency Relocation Agreement ("FRA") with Sprint Nextel by the end of the three-month voluntary or three-month mandatory negotiation periods, it is automatically sent into mandatory alternative dispute resolution with Sprint Nextel before a TA mediator.¹⁵ Yet Phase II of 800 MHz band reconfiguration is an extraordinarily complex process, involving many large public safety systems with numerous users, channels, and sites. The work licensees must complete to prepare retuning cost estimates and retuning plans has taxed their resources and the resources of the vendors and consultants on which they rely. Thus, 323 out of a total of 364 Wave 1, Phase II public safety licensees did not execute FRAs prior to the end of the Wave 1 mandatory retuning period and were sent into mediation. Similarly, 224 out of the total 226 Wave 2, Phase II public safety licensees failed to complete FRAs within the six-month negotiation period and were "defaulted" into mediation. Mandatory mediation commenced May 1, 2007 for Wave 3, Phase II NPSPAC licensees with 254 out of 260 Wave 3 licensees being sent to mediation. While these results demonstrate that the Commission's negotiation and mediation processes have not worked as anticipated, AT&T offers no constructive refinements, improvements, or solutions.¹⁶

Phase II also poses extraordinary challenges associated with the nationwide NPSPAC mutual aid channels and the numerous local interoperability arrangements that have developed over the years. Sprint Nextel, NPSPAC licensees, and the TA must coordinate and maintain uninterrupted availability of the nationwide mutual aid channels, and identify and preserve local, state, and regional interoperability and mutual aid relationships. With these concerns in mind, Sprint Nextel and leading public safety organizations filed their February 2007 request for the Commission to direct the TA to develop specific benchmarks for Phase II.¹⁷ AT&T, on the other

¹⁴ Sprint Nextel also notes that many of these planning efforts did not even begin until 2007 because the requests for planning funding were not forwarded to Sprint Nextel until after November 1, 2006, at the end of the mandatory negotiation period for frequency relocation agreements and the start of the TA mediation process. See 800 MHz Transition Administrator Quarterly Progress Report at 15-17 (Feb. 19, 2007), attached to Letter from Steve Lederman, Squire, Sanders & Dempsey, to Marlene H. Dortch, FCC Secretary (Feb. 19, 2007, filed Feb. 20, 2007) ("TA Quarterly Report").

¹⁵ If a licensee has not executed an FRA with Sprint Nextel by the end of the two negotiating periods, it is placed in mediation. Thus a licensee is put into mediation if it seeks planning funding rather than moving directly to a retuning agreement, or is working through its planning activities. Licensees that do not provide retuning cost estimates or a statement of work by the end of the mandatory retuning period are also "automatically" referred to mediation.

¹⁶ Sprint Nextel has recommended that the Commission amend its rules to streamline the process and avoid the premature referral of hundreds of licensees to mediation.

¹⁷ Joint Public Safety-SprintNextel Feb. 15 Letter.

hand, would force NPSPAC licensees to meet their retuning deadlines, regardless of the risk to mission critical communications.

AT&T's letter also overlooks legal constraints on Sprint Nextel's flexibility to negotiate retuning funding. Sprint Nextel has been obligated to comply with the stringent cost standard the Commission adopted in the *800 MHz R&O*, which requires licensees to certify that retuning costs are the "minimum necessary to provide facilities comparable to those presently in use."¹⁸ Sprint Nextel must also carefully document all of its reconfiguration expenditures to comply with its obligations under the Commission's anti-windfall payment process and the federal False Claims Act.¹⁹

In response to requests filed by Sprint Nextel and the public safety community, however, the Commission has clarified the *800 MHz Report and Order* to provide that incumbent costs must be the "minimum necessary" to accomplish rebanding of 800 MHz licensees in a reasonable, prudent and timely manner."²⁰ The Commission agreed with Sprint Nextel that it should not have to insist on reducing rebanding costs to the lowest possible level if such cost savings come at the expense of a reasonable, prudent and timely approach to accomplishing rebanding tasks.²¹ The Commission's recent action provides Sprint Nextel the legal flexibility to evaluate cost disagreements in the context of achieving timely and efficient 800 MHz reconfiguration and to avoid, if greater, the costs of further negotiation and mediation.

AT&T's letter disregards other key factors beyond Sprint Nextel's control that have slowed 800 MHz band reconfiguration. U.S.-Canada and U.S.-Mexico border areas issues have constituted a major gating factor for 800 MHz band reconfiguration. Until the Commission establishes reconfigured 800 MHz band plans for these border areas, a large number of 800 MHz incumbents cannot negotiate their retunes.²² Another factor complicating the retuning of NPSPAC licensees is the adjacency of the new NPSPAC band at 806-809/851-854 MHz to TV Channel 69 (800-806 MHz). As various public safety licensees have recently pointed out to the Commission, until the digital television transition concludes in February 2009, high-power broadcast operations on Channel 69 will threaten significant interference to nearby NPSPAC

¹⁸ *800 MHz R&O* ¶ 198. Given its legal obligation to comply with the "minimum necessary" cost standard, Sprint Nextel's approach to non-disclosure agreements ("NDAs") with public safety licensees has been entirely reasonable, contrary to AT&T's characterization. See AT&T Letter at 7-8. Moreover, the use of NDAs was a common practice in prior relocation contexts. In any event, Sprint Nextel has moved forward with the rebanding process allowing public safety licensees to share information in the planning funding and frequency retuning agreements it negotiates with public safety licensees as they deem appropriate, consistent with the Commission's January 2007 order regarding this issue. *Improving Public Safety Communications in the 800 MHz Band*, Order, 22 FCC Rcd 172, ¶ 4 (2007).

¹⁹ See *800 MHz R&O* ¶¶ 329-330; 31 U.S.C. § 3729.

²⁰ *Cost Flexibility MO&O* ¶ 1.

²¹ *Id.* ¶ 10.

²² See Letter from Steve Taylor, Chair, NPSPAC Region 43 Regional Planning Committee, to Chairman Kevin J. Martin, FCC (Mar. 21, 2007, filed Mar. 23, 2007) (addressing issues related to international coordination in U.S.-Canada Border Areas).

licensees unless regulatory steps are taken to avoid this problem.²³ Again, AT&T's proposals would not solve this significant issue.

11. AT&T Misrepresents the Record in Criticizing Sprint Nextel's 800 MHz Expenditures and the Accounting Safeguards Adopted by the FCC and the TA

AT&T claims that "significantly less than 10 percent" of Sprint Nextel's expenditures on reconfiguration to date have been devoted to relocating public safety incumbents at 800 MHz.²⁴ AT&T's claim is wrong. Thus far, Sprint Nextel has spent approximately \$790 million on its 800 MHz reconfiguration obligations including retuning both 800 MHz and 1.9 GHz incumbents. Of this total, Sprint Nextel has spent about \$250 million on 800 MHz incumbent planning and retuning costs, including about \$200 million on NPSPAC licensees to date.²⁵ These expenditures will undoubtedly be higher as more planning funding agreements and frequency retuning agreements are signed. The *800 MHz R&O* does not require a full accounting until reconfiguration is completed, and the timing of Sprint Nextel's submissions is based on the reasonable and prudent use of its own resources as well as the TA's resources.

AT&T calls for an "accounting" by the Commission to ensure that reconfiguration funds are "monitored regularly and used prudently."²⁶ The *800 MHz R&O*, however, already provides stringent auditing and financial control requirements, as listed below:

- The TA reviews incumbent licensees' good faith estimates of the cost of reconfiguring their systems, and verifies that the funds requested are the minimum necessary to provide comparable facilities when it approves the Frequency Relocation Agreements negotiated by Sprint Nextel and incumbent licensees;
- The TA submits quarterly reports to the Commission, including certifications from Sprint Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received by the licensees in connection with this relocation;
- Annually, the TA submits to the Public Safety and Homeland Security Bureau an independently-audited statement of 800 MHz relocation funds spent to date and submitted for credit;

²³ Request for Limited Waiver of Rockdale County, GA (Apr. 10, 2007); Request for Limited Waiver of the City of Covington and Newton County, GA (Mar. 29, 2007, filed Mar. 30, 2007) (both requesting suspension of all frequency reconfiguration planning and negotiations until September 2008 in order to address potential interference from operations on Channel 69 in Atlanta, GA).

²⁴ AT&T Letter at 11-12.

²⁵ The difference between the expenditures itemized above and the total spend to date include costs for relocating 1.9 GHz BAS incumbents, the costs of establishing and maintaining the Commission-required Letter of Credit, the costs of the Transition Administrator, and costs associated with preparing Sprint Nextel's network to operate in the former NPSPAC channel block.

²⁶ AT&T Letter at 12-13.

- Following the retuning of an incumbent's system, the TA audits the amount expended on that retuning;
- Sprint Nextel keeps accurate records of the labor and material reasonably expended or acquired in connection with clearance of the 1.9 GHz band. An annual audit of these expenses is made at Sprint Nextel's expense by an auditing firm approved by the Commission;²⁷
- At the conclusion of 800 MHz band reconfiguration, the TA and Sprint Nextel will undertake a financial reconciliation process to determine whether Sprint Nextel must make a payment to the U.S. Treasury for any difference between the value of the 1.9GHz spectrum rights and the net sum of its band reconfiguration "credits." As part of this process, Sprint Nextel will provide the TA an accounting of the funds spent to reconfigure its own systems in the 800 MHz band and to clear the 1.9 GHz band, and the TA will verify these costs. The TA will also provide an accounting of the funds spent to reconfigure the systems of 800 MHz incumbent operators, including its own salary and expenses.²⁸

With regard to Sprint Nextel's internal reconfiguration costs, the TA first reviews Sprint Nextel's documentation outlining cost categories for which credit will be sought and determines if the item falls in a cost category that is creditable under the *800 MHz R&O*. The TA then reviews Sprint Nextel's internal controls to ensure that the appropriate controls are in place to accurately and reliably capture the approved costs. Finally, before Sprint Nextel submits its costs to be credited, the TA reviews Sprint Nextel's vendor or category-specific detailed cost justification to ensure that the work performed was necessary and appropriately included in an approved cost category. Given these numerous cost control mechanisms, no basis exists for AT&T's attack on the Commission's accounting procedures.

III. The Commission Should Reject AT&T's Proposal Regarding Sprint Nextel's Use of General Category and 1.9 GHz Spectrum

AT&T proposes that the Commission limit Sprint Nextel's access to the 1-120 General Category and 1.9 GHz spectrum during band reconfiguration. This proposal amounts to a petition for reconsideration filed more than two years late. The Commission specifically addressed and properly rejected these points during earlier reconsideration stages of this proceeding. In its December 2004 *800 MHz Supplemental Order*, the Commission modified its 18-month retuning progress benchmark by permitting Sprint Nextel to continue operations on its General Category channels through the retuning of NPSPAC licensees during Phase II.²⁹ In its

²⁷ In October 2006, the Commission staff indicated its approval of the national accounting and auditing firm, KPMG LLP, as Sprint Nextel's auditor of 1.9 GHz Broadcast Auxiliary Service ("BAS") relocation costs for the calendar year 2005 and beyond. On January 11, 2007, Sprint Nextel filed KPMG's annual audit of Sprint Nextel's 1.9 GHz expenses for 2005 with the Commission. See Letter from James Goldstein, Sprint Nextel Corporation, to David Furth, Public Safety and Homeland Security Bureau, FCC (Jan. 11, 2007).

²⁸ *800 MHz R&O* ¶ 330.

²⁹ *800 MHz Supplemental Order* ¶¶ 52-53.

October 2005 *800 MHz MO&O*, the Commission rejected a proposal that would bar Sprint Nextel from using its 1.9 GHz spectrum in a given NPSPAC region until the completion of 800 MHz rebanding in that region.³⁰ Today, more than two years after the *800 MHz Supplemental Order* and a year and a half after the *800 MHz MO&O*, AT&T has no procedural right to reopen these settled issues.

In any case, AT&T's proposals would do nothing to facilitate 800 MHz band reconfiguration. As the Commission found in the *800 MHz Supplemental Order*, Sprint Nextel must use General Category spectrum at 806-809/851-854 MHz to meet a portion of its subscriber demand during the transition, and it would be impractical for Sprint Nextel to prematurely clear its own operations out of this band segment.³¹ Requiring Sprint Nextel to vacate its General Category spectrum unnecessarily would diminish the quality of Sprint Nextel's service to its subscribers, including its large base of public safety customers. This would do nothing to "support and advance the Commission's public safety and homeland security agenda."³²

Sprint Nextel's commitment to contribute billions of dollars in financial and spectrum resources to implement the Commission's 800 MHz reconfiguration decision was based on the Commission's careful value-for-value analysis in the *800 MHz R&O* and *800 MHz Supplemental Order*.³³ The Commission's analysis, based on an exhaustive record, sought to ensure that the value of the 1.9 GHz replacement spectrum Sprint Nextel receives matches the value of its substantial contributions. AT&T's proposals to constrain Sprint Nextel's access to this replacement spectrum would violate this value-for-value principle and undermine the careful balance and legal justification the Commission adopted in ensuring Sprint Nextel is made whole.³⁴

IV. AT&T Misrepresents the Value of the 1.9 GHz Replacement Spectrum

AT&T misrepresents the effect of 800 MHz band reconfiguration on the U.S. Treasury, asserting that U.S. taxpayers have "lost out on billions of dollars of revenue that would have resulted from auctioning the 1.9 GHz spectrum awarded to Nextel."³⁵ As an initial matter, AT&T glosses over the fact that American taxpayers will realize an enormous benefit from the Commission's balanced "value-for-value" exchange in the *800 MHz R&O*: long-term resolution of the ongoing interference to public safety communications at 800 MHz.³⁶ Moreover, any

³⁰ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Memorandum Opinion and Order, 20 FCC Rcd 16015, ¶ 80 n.224 (2005) ("*800 MHz MO&O*").

³¹ *800 MHz Supplemental Order* ¶¶ 52-53.

³² AT&T Letter at 1.

³³ *800 MHz R&O* ¶ 212; *800 MHz Supplemental Order* ¶¶ 28-36.

³⁴ AT&T also does not account for the fact that Sprint Nextel has already been granted a nationwide license at 1910-1915/1990-1995 MHz. AT&T's proposal to postpone Sprint Nextel's access to this spectrum would involuntarily modify this license. Section 316 of the Communications Act requires that the Commission comply with certain safeguards before imposing material changes on a licensee's authorization. 47 U.S.C. § 316(a)(1).

³⁵ AT&T Letter at 3.

³⁶ *Id.* at 11.

suggestion by AT&T that Sprint Nextel is obtaining a windfall as a result of being “awarded” this spectrum is baseless. The Commission’s valuation of the 1910-1915/1990-1995 MHz band segment at \$4.86 billion fully protects U.S. taxpayers. The Commission based the \$4.86 billion figure on a valuation of \$1.70 per MHz/POP, a price that far exceeds the cost of similar spectrum in recent auctions. For instance, in the Advanced Wireless Services (“AWS”) auction (Auction 66) completed in September 2006, the winning bidders on average paid only \$0.53 per MHz/POP for their spectrum at 1.7/2.1 GHz.

V. AT&T’s Previous Positions Undermine the Credibility of its April 19 Letter

Although AT&T now expresses concern about ongoing 800 MHz interference and the implementation of the Commission’s 800 MHz reconfiguration decision, it took very different positions in the proceedings that culminated in the *800 MHz R&O*. In those proceedings, AT&T downplayed its contribution to 800 MHz interference, claiming cellular carriers “are glaringly absent as contributors to such interference.”³⁷ The Commission, however, strongly disagreed, finding that: “Despite the claims by some that licensees in the cellular telephone bands cause little interference to 800 MHz band public safety systems, strong evidence exists to the contrary.”³⁸

Moreover, while AT&T expresses concern about the pace of 800 MHz band reconfiguration, it previously *opposed* any reconfiguration of the 800 MHz band. In fact, AT&T claimed that “*rebanding 800 MHz will not produce any significant reduction in interference to public safety communications.*”³⁹ AT&T’s prior actions in this proceeding call into question the credibility of its April 19 letter. Its putative solutions would unfairly harm Sprint Nextel and risk disrupting public safety communications with no tangible benefits to 800 MHz reconfiguration.

VI. Conclusion

It is unclear why AT&T has chosen to make these counterproductive suggestions when it has had no involvement in the reconfiguration process. Perhaps it seeks to gain a competitive advantage by hamstringing the operation of Sprint Nextel’s 800 MHz network through its

³⁷ Reply Comments of Cingular, *et al.*, at 3 (Aug. 7, 2002).

³⁸ *800 MHz R&O* ¶ 13. The Wireless Telecommunications Bureau rebuked AT&T in a separate proceeding for its refusal to cooperate with Anne Arundel County in resolving interference from AT&T’s cellular operations to the County’s public safety communications system. Petition of Cingular Wireless L.L.C. for a Declaratory Ruling that Provisions of the Anne Arundel County Zoning Ordinance are Preempted as Impermissible Regulation of Radio Frequency Interference Reserved Exclusively to the Federal Communications Commission, Memorandum Opinion and Order, 18FCC Rcd 13126, ¶¶ 5, 26 (2003).

³⁹ Joint Comments of Cingular and Alltel Communications, Inc., Attachment A at 10 (May 6, 2002) (emphasis in original). For example, AT&T first proposed delaying the 700 MHz auction, revising the 700 MHz band plan, and relocating all 800 MHz public safety licensees to the 700 MHz band – despite the fact that such steps would have required legislation, funding, and many years to implement. *Id.* at 16-19. One year later, AT&T expressed support for the “Balanced Approach,” which amounted to little more than prior coordination and technical changes that parties had previously used in an unsuccessful attempt to address the interference problem. Letter from Jill Lyon, United Telecom Council, to Marlene Dortch, FCC Secretary (May 29, 2003); Letter from Brian Fontes, Cingular, to Marlene Dortch, FCC Secretary (Nov. 7, 2003).

punitive requests. Perhaps AT&T seeks to divert attention from its anti-competitive special access pricing practices, which achieve annual rates of return of up to 100 percent as a result of no meaningful competition.⁴⁰ Or perhaps AT&T wants to deflect scrutiny of its new “corporate policy” denying CMRS operators direct interconnection with AT&T’s wireless affiliate by requiring them to unnecessarily route traffic through AT&T’s local exchange facilities. This “policy” introduces a new bottleneck in wireless-to-wireless calling with no apparent reason other than to re-route, for example, Sprint Nextel’s traffic so that AT&T can charge high transit rates while increasing Sprint Nextel’s service costs.⁴¹

Whatever may have motivated AT&T to file its letter, it is clear that its proposals fail to take into account the Commission’s directive that the transition to the new 800 MHz band plan should minimize disruptions to public safety, Sprint Nextel, and other incumbent licensees. The Commission should reject AT&T’s proposals, just as it dismissed AT&T’s counterproductive arguments during the 800 MHz rulemaking proceedings.

Sincerely,

/s/ Lawrence R. Krevor

Lawrence R. Krevor
Vice President - Spectrum

cc:	The Honorable Kevin J. Martin	Bruce Gottlieb
	The Honorable Michael J. Copps	Barry Ohlson
	The Honorable Jonathan S. Adelstein	Aaron Goldberger
	The Honorable Deborah Taylor Tate	Angela Giancarlo
	The Honorable Robert M. McDowell	Chief Derek Poarch
	Michelle Carey	David Furth

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See Sprint Nextel Corporation Comments, WT Docket No. 07-71 (May 7, 2007) (“Sprint Nextel May 7 Comments”); Testimony of Barry West.

⁴¹

See Sprint Nextel May 7 Comments.

Marlene H. Dortch, Secretary
May 24, 2007
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CERTIFICATE OF SERVICE

I, Claudia Del Casino, hereby certify that the foregoing letter was served this 24th day of May, 2007 by United States Postal Service, first class postage prepaid, on:

Brian Fontes
Vice President
Federal Regulatory
AT&T Services, Inc.
1120 20th Street, NW
Suite 1000
Washington, D.C. 20036

/s/ Claudia Del Casino
Claudia Del Casino